

USSN 10/620,000, filed July 14, 2003
Attorney Docket No. 1103326-0250(CON)
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REMARKS

Claim Rejection – 35 U.S.C. §103

The Examiner has maintained the rejection of record based on an incorrect determination of the effective prior art date of the cited reference US 6,136,344 to Depui et al. (the "344 patent") which is §371 of PCT/SE96/00125, filed 2 February 1996, and a continuation-in-part of U.S. Patent Application Serial No. 08/628,712 (the "712 application"), filed 7 June 1995.

To assist the Examiner, Applicants submit herewith a copy of Example 6 from the §706.02(f)(1) of the M.P.E.P. with regard to Examination Guidelines for Applying References under 35 U.S.C. §102(e). The Examiner is respectfully requested to give special attention to the first paragraph under the heading "Additional Priority/Benefit Claims". In brief, Example 6 expressly provides that the effective prior art date of the '344 patent is the §371 date of the '344 patent and not the filing date of the '712 application as stated by the Examiner in the Advisory Action.

Claims 1, 4-14, 22, 25-28, 33, 34 and 37-45 are rejected under 35 U.S.C. §103(a) as being unpatentable over (1) the combination of US 4,786,505 to Lovgren et al. (the "505 patent"), EP 0 426 479 ("EP '479) and US 6,136,344 to Depui et al. (the "344 patent") or (2) the combination of the '344 patent and EP '479.

Each of the prior art combinations (1) or (2) includes the '344 patent. Applicants submit that the '344 patent does not qualify as prior art with respect to the claimed invention. As clearly supported by Example 6 from M.P.E.P. §706.02(f)(1), the effective prior art date of the '344 patent is 15 April 1996, i.e., the §371 date, which is later than the 8 January 1996 priority date of the subject application. The effective prior art date of the '344 patent is not the 7 June 1995 filing date of the '712 application.

Accordingly, each of the prior art combinations (1) and (2) is improper. Withdrawal of the rejection under 35 U.S.C. §103(a) is respectfully requested.

FROM W&C LLP 19TH FL.

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CONCLUSION

Applicants submit that pending claims 1, 4-14, 22, 25-28, 33, 34 and 37-45 are in condition for allowance, which action is earnestly solicited. The Commissioner is hereby authorized to charge Deposit Account No. 23-1703 in the event that any fee is required in connection with this communication.

Dated: 15 June 2006

Respectfully submitted,

John M. Genova

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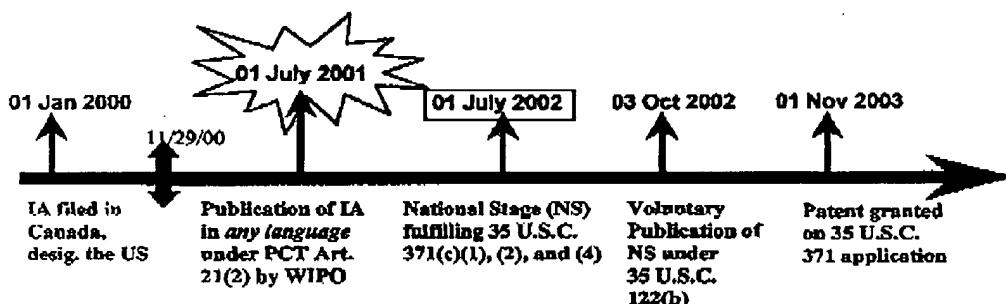
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EXAMINATION OF APPLICATIONS

706.02(f)(1)

Example 6: References based on the national stage (35 U.S.C. 371) of an International Application filed prior to November 29, 2000 (language of the publication under PCT Article 21(2) is not relevant).

The reference U.S. patent issued from an international application (IA) that was filed prior to November 29, 2000 has a 35 U.S.C. 102(e) prior art date of the date of fulfillment of the requirements of 35 U.S.C. 371(c)(1), (2) and (4). This is the pre-AIPA 35 U.S.C. 102(e). The application publications, both the WIPO publication and the U.S. publication, published from an international application that was filed prior to November 29, 2000, do not have any 35 U.S.C. 102(e) prior art date. According to the effective date provisions as amended by Pub. L. 107-273, the amendments to 35 U.S.C. 102(e) and 374 are not applicable to international applications having international filing dates prior to November 29, 2000. The application publications can be applied under 35 U.S.C. 102(a) or (b) as of their publication dates.



The 35 U.S.C. 102(e)(1) date for the IA Publication by WIPO is: None.

The 35 U.S.C. 102(e)(1) date for the Publication by USPTO is: None.

The 35 U.S.C. 102(e)* date for the Patent is: 01 July 2002.

The IA publication by WIPO can be applied under 35 U.S.C. 102(a) or (b) as of its publication date (01 July 2001).

Additional Priority/Benefit Claims:

If the IA properly claimed priority/benefit to any earlier-filed U.S. application (whether provisional or nonprovisional), there would still be no 35 U.S.C. 102(e)(1) date for the U.S. and WIPO application publications, and the 35 U.S.C. 102(e) date for the patent will still be 01 July 2002 (the date of fulfillment of the requirements under 35 U.S.C. 371(c)(1), (2) and (4)).

If a later-filed U.S. nonprovisional (35 U.S.C. 111(a)) application claimed the benefit of the IA in the example above, the 35 U.S.C. 102(e)(1) date of the application publication of the later-filed U.S. application would be the actual filing date of the later-filed U.S. application, and the 35 U.S.C. 102(e) date of the patent of the later-filed U.S. application would be 01 July 2002 (the date that the earlier-filed IA fulfilled the requirements of 35 U.S.C. 371(c)(1), (2) and (4)).